

MICHAEL BAILEY
United States Attorney
District of Arizona

KEVIN M. RAPP (Ariz. Bar No. 14249)
kevin.rapp@usdoj.gov
Assistant U.S. Attorney
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4408
Telephone (602) 514-7500
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

David Allen Harbour,

Defendant.

No. CR-19-00898-PHX-DLR (DMF)

**GOVERNMENT'S MOTION FOR A
PROTECTIVE ORDER**

SUMMARY OF ARGUMENT

The United States of America, by and through the undersigned, respectfully moves for a Protective Order regarding the disclosure of the government's discovery including exhibit and witness lists. Despite alerting the defense to the government's objection to the dissemination and use of any documents provided pursuant to the scheduling order, the defense filed the government's witness and exhibit list in an unrelated civil case. Although the documents were filed under seal, third parties have access to the documents, and the government can no longer control the dissemination of these materials. Accordingly, the government now seeks a protective order that limits the dissemination of government disclosures to third parties.

RELEVANT FACTS

On August 7, 2020, the government sent the defense a letter objecting to the dissemination of government disclosures to third parties. (Ex. A). The letter requested that

1 the defense delay the disclosure of these items so that the government could seek a
2 Protective Order from the Court. (*Id.*) Despite the government's request, the defense filed
3 the exhibit and witness list in an unrelated state civil case. The defense then responded
4 that they filed these documents under seal and that these documents, in their view, were
5 actually beneficial to the government's case. (Ex. B). The government responded with
6 why the government's disclosure cannot be disseminated to third parties and why the filing
7 under seal does not address the government's concerns. (Ex. C). Now, the government
8 seeks a protective order for government disclosures going forward.

9 **ARGUMENT**

10 In light of the defense's position that government disclosures ("Protected
11 Materials") can be disseminated to third parties, the government specifically requests that
12 the Court order that defense counsel and his team be prohibited from duplicating the
13 government's disclosures and distributing them to other persons, including the defendant.
14 Nothing in this motion is deemed to prevent defense counsel from sharing the information
15 contained in the Protected Materials with his client. Rather, defense counsel should not
16 provide the defendant a copy of the materials.

17 Further, the government requests that defense counsel be required to provide a copy
18 of this Protective Order to members of the defense team, and obtain written consent from
19 members of the defense team of their acknowledgment to be bound by the terms and
20 conditions of this Protective Order, prior to providing the Protected Materials to members
21 of the defense team. The written consent need not be disclosed or produced to the United
22 States unless requested by the Assistant United States Attorney and ordered by the Court.
23 Upon completion of this case, defense counsel shall collect all copies of the Protected
24 Materials from the defense team and return them to the office of the United States Attorney,
25 or otherwise certify that the Protected Materials have been destroyed.

26 The Order should not limit employees of the United States Attorney's Office for the
27 District of Arizona from copying and distributing the Protected Materials to members of
28 the United States Attorney's Office, federal law enforcement agencies, or to the Court and

1 defense as necessary to comply with the government's discovery obligations.

2 By disclosing the Protected Materials with the defense, the government does not
3 concede that the materials are admissible at any proceedings in this matter.

4 In summary, due to the sensitive nature of the materials, the government respectfully
5 requests that the court issue a Protective Order with regards to the Protected Materials.

6 Respectfully submitted this 19th day of August, 2020.

7 MICHAEL BAILEY
8 United States Attorney
District of Arizona

9 s/ Kevin Rapp
10 KEVIN M. RAPP
Assistant U.S. Attorney

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12 **CERTIFICATE OF SERVICE**

13 I hereby certify that on this same date, I electronically transmitted the attached
14 document to the Clerk's Office using the CM/ECF system for filing and transmittal of a
Notice of Electronic Filing to the following CM/ECF registrants:

15 Alan Baskin
16 Baskin Richards PLC
2901 N. Central Avenue, Suite 1150
17 Phoenix, Arizona 85012
415-494-8887
18 Email: alan@baskinrichards.com

19 *Attorneys for defendant David Allen Harbour*

20 s/ Joy Faraj
21 U.S. Attorney's Office